

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>01-13323</u>
VICTOR V. SANSIUB)	
SS# 550-27-5893)	
SARINYA J. SANSIUB)	FILED
SS# 567-57-5376)	2002 APR 25 A 11:59
P. O. Box 704)	
Augusta, Georgia 30903)	
)	
Debtors)	
)	
UNITED STATES TRUSTEE,)	
)	
Movant)	
)	
vs.)	
)	
VICTOR V. SANSIUB)	
SARINYA J. SANSIUB)	
)	
Respondents)	

ORDER

Pursuant to notice hearing was held on the United States Trustee's motion to dismiss the chapter 7 bankruptcy case of Victor V. and Sarinya J. Sansiub under 11 U.S.C. §707(b), §707(a), or, in the alternative, conversion to a Chapter 13 under §706(a). Because the Sansiubs substantially abused the provisions of the Bankruptcy Code by accruing over \$100,000 in gambling-related debts in the ten months preceding their filing with no possibility of repayment, the Trustee's motion is sustained and the Sansiub's petition is

dismissed under 11 U.S.C. §707(b)¹.

The Court has jurisdiction to hear this matter as a core bankruptcy proceeding under 28 U.S.C. § 157(b)(2)(A)&(J) and 28 U.S.C. § 1334.

From the evidence presented, I make the following findings. Mr. Sansiub is an engineer at SRS/Bechtel, for whom he has worked the past eleven years. His salary is approximately \$70,000 per year. Mrs. Sansiub is a housewife and is currently not employed for wages. The Sansiubs are originally from Thailand. They have three children; the oldest child is married and independent, the second child is a student in New York, and the third child attends a local college and lives at home.

The Sansiubs filed for chapter 7 bankruptcy relief on October 9, 2001. On January 22, 2002, the United States Trustee filed a Motion seeking dismissal of the Chapter 7 case for substantial abuse, for which a hearing was held on March 14, 2002. The Sansiubs have not sought a conversion of their case to another

¹11 U.S.C. §707(b) reads in pertinent part:

(b) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

chapter under Title 11.

In December 2000, the Sansiubs had \$47,869.11 in credit card debt. (Tr.'s Ex. 2A.) By October 1, 2001, shortly before filing for bankruptcy relief, the Sansiubs' credit card debt had increased to \$184,003.04 on twenty-three (23) cards. (Tr.'s Ex. 2A.) Most of this debt is connected to gambling trips. During the ten month period prior to bankruptcy, Mr. Sansiub went on at least eight trips to casinos in Atlantic City, Las Vegas, and New Orleans. (Tr.'s Ex. 2A.) Mr. Sansiub stated that Mrs. Sansiub accompanied him on these trips, but did not gamble. \$75,141.09 in credit card charges were directly billed by casinos and the Sansiubs also took out \$26,698.00 in credit card cash advances. (Tr.'s Ex. 2A.) In addition, substantial cash draws totaling \$34,102.95 were taken from the Sansiubs' two checking accounts prior to bankruptcy. (Tr.'s Ex. 4A & 5A.) These cash advances were either for the purpose of their gambling trips or to pay down their monthly credit card accounts. Mr. Sansiub testified that these trips were for the purpose of entertaining his friends and family. According to Mr. Sansiub, in Thai culture his role as host requires him to pay for his guests' expenses.

Mr. Sansiub admitted to visiting casinos after filing for bankruptcy. His Southtrust Bank checking account shows cash withdrawals totaling \$1,516.90 for trips to Atlantic City, Robinsonville, Mississippi, and New Orleans. (Tr.'s Ex. 5A.) Mr. Sansiub explained that these casino trips were made en route to visiting relatives.

In addition to their credit card debts, the Sansiubs also took out loans: 1) \$79,700.00 home mortgage dated December 31, 1998; 2) \$29,300.00 from Mr. Sansiub's SIP retirement account dated February 1, 2000; 3) a second mortgage for \$30,000.00 from Countrywide Home Loans dated December 29, 2000; 4) \$31,000.00 loan from PNC Bank/American Express dated April 24, 2001; and 4) \$21,800.00 from Mr. Sansiub's SIP retirement account dated August 30, 2001. (Tr.'s Ex. 3A.) The two SIP retirement account loans are not listed on the Sansiubs' schedules. Schedule I shows that \$1,068.00 per month is deducted from Mr. Sansiub's paycheck as repayment of the two SIP loans. The \$31,000.00 loan from PNC Bank/American Express was used to pay off the Countrywide Homes Loan. (Tr.'s Ex. 3A.)

The Sansiubs used part of at least one of the loans for gambling. On December 29, 2000, the Sansiubs borrowed \$30,000.00 from Countrywide Home Loans and deposited this amount in their SRP Federal Credit Union checking account. (Tr.'s Ex. 3A & 4A.) On January 2, 2001 and January 11, 2001, \$12,000.00 in cash withdrawals were made from the checking account. (Tr.'s Ex. 4A.) On March 30, 2001, another \$3,000 was withdrawn as cash from the same checking account. (Tr.'s Ex. 4A.) According to Mr. Sansiub, this money was to help with their children's college expenses. No other explanation or evidence was offered.

As previously shown, the Sansiubs borrowed \$24,800.00 against Mr. Sansiub's SIP retirement account on July 31, 2001. (Tr.'s Ex. 3A). Mr. Sansiub testified that the purpose of this loan

was to pay bills and noted that he paid \$5,000.00 to one of the credit card companies, MBNA America. Mr. Sansiub admitted to cashing a check for \$24,084.72 on August 7, 2001. He stated that the purpose of this money was to pay back a friend. (Tr.'s Ex. 4A). Mr. Sansiub denies that this loan was connected to gambling.

The Sansiubs made substantial omissions from their bankruptcy schedules. These omissions include 1) gambling losses; 2) a checking account with SRP Federal Credit Union; and 3) the above referenced retirement account. The Sansiubs did not disclose any gambling losses on line 8 of their Statement of Financial Affairs². Mr. Sansiub's testimony at hearing, however, established that a substantial portion of his debts were related to gambling. In addition, the Sansiubs disclosed on Schedule B only one checking account with Southtrust Bank. No employer savings and investments or additional checking accounts were listed on Schedule B, lines 2 and 11³. During the hearing Mr. Sansiub admitted that he had a retirement account through his employer worth approximately

²Line 8 of Statement of Financial Affairs states:
8. Losses

List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case.

³Schedule B, lines 2 and 11 provide in pertinent part:
2. Checking, savings, or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and other homestead associations, or credit unions, brokerage houses, or cooperatives.

....

11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.

\$60,000.00. According to a pay stub dated October 31, 2001, Mr. Sansiub paid 16% of his earnings into his retirement account. His January 31, 2002 pay stub shows a contribution of 8% to this account. (Tr.'s Ex. 6A). The Sansiubs did state on Schedule I, which lists their monthly income, that Mr. Sansiub was paying \$878.00 per month into his SIP retirement fund. (Tr.'s Ex. 6A). Evidence presented at the hearing established that Mr. Sansiub had a second undisclosed checking account with SRP Federal Credit Union. (Tr.'s Ex. 4A).

The United States Trustee alleges that Sansiubs filed for bankruptcy relief in bad faith because they ran up an enormous amount of credit card debt with no intention of repaying. The United States Trustee asks that the Sansiubs be denied a discharge under §707(a) or (b).

The Sansiubs argue that their bankruptcy filing was caused by family obligations. According to Mr. Sansiub, their debts have been accumulating since 1993, when, in addition to his wife and three children, he was also supporting his mother, father-in-law, brother, and his brother's wife. Mr. Sansiub further testified that he was also responsible for his mother and mother-in-law's medical bills and expenses. With the exception of their children, the Sansiubs' relatives moved out of the house in 1998. Furthermore, Mr. Sansiub's mother died in January 2001 before the Sansiubs experienced this spiral of out of control debt.

The Sansiubs also argue that while they made poor choices financially, they did not act in bad faith. The Sansiubs cite the

fact that they continued to pay down their credit card debt shows that they did not accrue debts with the intent of not paying. Mr. Sansiub acquired new cards and shifted debts from one card to another in an effort to minimize interest rates. While Mr. Sansiub made substantial payments to his credit card accounts, the money from these transactions came from other credit card cash advances; his net indebtedness did not change, but in fact increased.

Mr. Sansiub also testified that since 1993 he had a pattern of running up credit card debts as high as \$100,000.00 and then paying them down with gambling winnings. Mr. Sansiub did not give any specific numbers or provide any documentary evidence to show this pattern, however.

Mr. Sansiub described the efforts he and his family made to reduce their living expenses. For example, the Sansiubs asked their son to transfer from Georgia Southern University to Augusta Tech so that he could live at home and thereby reduce costs. When one of their daughters in New York asked for money for a medical exam, she was told that she would have to find the money on her own. Mrs. Sansiub cut up credit cards. Mr. Sansiub also stated that he tried to do extra work as it became available. Finally, the Sansiubs are no longer entertaining friends.

I must first determine whether the debts are primarily consumer debts. See, 11 U.S.C. §707(b) footnote 1. A consumer debt is a debt primarily incurred "for a personal, family, or household purpose." 11 U.S.C. §101(8). The next step is to determine whether a chapter 7 discharge would constitute "substantial abuse" of the

Bankruptcy Code. 11 U.S.C. §707(b). In deciding this, I take into account the following factors:

1. debtor's future income and ability to pay their debts;
2. whether the chapter 7 petition was filed in response to sudden illness, calamity, disability or unemployment;
3. whether the debtors incurred cash advances or made consumer purchases far in excess of their ability to pay;
4. whether the debtor's schedules and statement of current income and expenses reasonably and accurately reflect debtor's true financial condition; and
5. debtor's subjective good faith in filing for chapter 7 relief.

United States Trustee v. Pryor (In re Pryor), Ch. 7 Case No. 97-11527 slip op. at 5 (Bankr. S.D. Ga. Augusta Division, March 19, 1998) (J. Dalis), citing Walton v. Smith (In re Smith), Ch. 7 Case No. 96-11160 slip op. at 6-7 (Bankr. S.D. Ga. March 31, 1997) (J. Dalis). While the debtor's future income and ability to repay is to be weighed heavily in this analysis, this factor alone is not enough to justify dismissal. Id. Furthermore, the United States Trustee must overcome the "presumption in favor of granting relief requested by the debtor." 11 U.S.C. §707(b).

The Sansiubs' debts are primarily consumer debts. Gambling debts are a type of consumer debt. 11 U.S.C. §101(8); In re Vianese, 192 B.R. 61, 67-8 (Bankr. N.D.N.Y. 1996). The Sansiubs have stated that their gambling debts were for the purpose of entertaining family and friends. These debts are personal in nature and not for business. The Sansiubs do not dispute that the majority of their debts are primarily consumer in nature.

Looking at the Pryor factors, the Sansiubs must be denied a discharge for substantive abuse. The United States Trustee has

overcome the presumption in favor of granting relief to the Sansiubs. With regard to the first factor, the Sansiubs have little hope of paying back their current debts with future income. According to Schedule I, the Sansiubs' total monthly income is \$2,276.00; Schedule J shows that their monthly expenses are \$2,594.00. The Sansiubs would not be able to pay their debts under any other provision of Title 11.

The petition was not filed in response to a sudden illness, calamity, disability or unemployment. Although Mr. Sansiub testified to being his family's sole support for the period of 1993 through present, all but his children had moved out of the house by 1998; his mother died in early 2001, and by late 2001 they were only supporting their youngest son. These "family obligations" in no way responsible for the Sansiubs' rapid accumulation of debt. The Sansiubs filed for bankruptcy only after their credit ran out and they were unable to continue funding their recreational gambling trips.

The Sansiubs incurred cash advances and made consumer purchases far in excess of their ability to pay. Mr. Sansiub drew \$26,698.00 in credit card cash advances in the ten months before bankruptcy; much if not all of this money went towards entertainment or payments on other credit card debt. Mr. Sansiub ran up \$75,141.09 in casino charges on his credit cards. Furthermore, he took large cash withdrawals from his checking account at times corresponding with his trips.

The Sansiubs' schedules do not accurately reflect their

true financial condition; instead, they made serious and significant omissions. The Sansiubs failed to report a retirement account worth \$60,000.00. Nor did they report any gambling losses for 2001. The Sansiubs also failed to disclose a second checking account with SRP Federal Credit Union. Nor did they make any attempt to amend their schedules to correct these omissions.

Finally, I must take into consideration the Sansiubs' subjective good faith in filing for chapter 7 relief. There is no good faith here. The evidence clearly establishes that the Sansiubs filed for bankruptcy after they ran out of credit. The Sansiubs argue as proof of their good faith the fact that they shifted credit card balances for lower interest rates and paid down their credit card debts. The Sansiubs' shifting of credit card balances, however, was not to reduce their debts; rather, this was to free up additional credit so that they could spend more money on entertainment. Regarding claimed payments on their monthly credit card bills, Mr. Sansiub paid these through cash advances from other credit cards with the net overall debt increasing. While Mr. Sansiub testified about his efforts to decrease their living expenses by cutting off his children, he continued to make post-petition gambling trips. The evidence shows that the Sansiubs perpetuated this scheme of using credit cards to fund a lavish

lifestyle.

Considering these circumstances as a whole, I find that to grant the Sansiubs a discharge would be a substantial abuse of the bankruptcy code. The Sansiubs in essence threw away over \$100,000.00 in gambling trips for the purpose of entertaining friends and family with no thought of repayment. The discharge is meant for the "honest but unfortunate debtor. Logan Loan Co. v. Hunt, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934). These debtors were not honest in their disclosures upon filing. There is nothing unfortunate about these debtors.

It is therefore ORDERED that the United Trustee's motion be sustained and that this case is dismissed.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 24th day of April, 2002.